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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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April 14, 2011

LEGEND

Distributing =

Controlled =

Sub 1 =

Sub 2 =

a =

b =

c =

d =

e =

Trust 1 =

Trust 2 =

Trust 3 =

Business 1 =

Business 2 =

Date 1 =

Dear :

This letter responds to your July 15, 2010 request for rulings on certain federal income tax consequences of the Proposed Transactions (as defined below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below) (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

FACTS

Distributing is the common parent of an affiliated group that files a consolidated federal income tax return. Distributing is a holding corporation that wholly owns two subsidiaries, Sub 1 and Sub 2. Sub 1 is engaged in Business 1 and Sub 2 is engaged in Business 2.

Distributing has two classes of stock outstanding, Class 1 stock and Class 2 stock. Generally, the Class 1 stock is intended to reflect the performance of Sub 1 and Business 1 while the Class 2 stock is intended to reflect the performance of Sub 2 and Business 2.

The Class 1 stock and Class 2 stock are each divided into two series (Series A and Series B). The Series A and Series B stock have substantially similar economic and voting rights per share. Series A represents approximately a percent of the Class 1 or Class 2 stock, as the case may be, and Series B represents approximately b percent of the Class 1 or Class 2 stock, as the case may be. Series A represents more than, and Series B represents less than e percent of the total outstanding stock of Distributing.

The Series A stock is owned by Trust 1 and Trust 2, each of which owns approximately c percent of the Series A stock of each class of shares. The Series B stock is held by Trust 3. As of Date 1, amount d is outstanding on a loan from Sub 2 to Distributing (the Sub 2 Loan). Financial information submitted indicates each of Business 1 and Business 2 has had gross receipts and operating expenses representative of an active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTIONS

For various business purposes, Distributing has proposed the following transactions (the "Proposed Transactions"):

- (i) Distributing will contribute all the outstanding capital stock of Sub 2 to a newly formed holding corporation ("Controlled") in exchange for all the newly issued and outstanding stock of Controlled (the "Contribution"). The Controlled stock may be divided into two series, Controlled Series A and Controlled Series B. The Controlled Series A and Controlled Series B stock will have substantially similar economic and voting rights.
- (ii) Distributing will distribute all the stock of Controlled to the holders of the Class 2 stock on a pro rata basis in exchange for all Distributing's outstanding Class 2 stock (the "Distribution"). If the Controlled stock is divided into two series, Controlled Series A and Controlled Series B, the Controlled Series A stock will be distributed to holders of the Distributing Series A, Class 2 stock, and the Controlled Series B stock will be distributed to holders of the Distributing Series B, Class 2 stock.

REPRESENTATIONS

Distributing makes the following representations regarding the Distribution:

- (1) The fair market of the controlled corporation stock and other consideration to be received by each shareholder of the distributing corporation will be approximately equal to the fair market value of the distributing corporation stock surrendered by the shareholder in the exchange.

- (2) No part of the consideration to be distributed by the distributing corporation will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.
- (3) The Distributing and Controlled corporations will each treat all members of their respective separate affiliated group (SAG) (as defined in section 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business
- (4) The 5 years of financial information submitted on behalf of the Distributing SAG is representative of the Distributing SAG's present business operation, and with regard to such Distributing SAG, there have been no substantial operational changes since the date of the last financial statements submitted.
- (5) The 5 years of financial information submitted on behalf of the business contributed to the Controlled SAG is representative of the Controlled SAG'S present business operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (6) Following the transaction, the Distributing SAG and Controlled SAG will each continue the active conduct of its business independently and with its separate employees.
- (7) The distribution of the stock, or stock and securities, of the Controlled corporations is carried out for the following corporate business purposes: Business and regulatory reputation, key employee and fit and focus. The distribution of the stock, or stock and securities, of the Controlled corporations is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (8) The Proposed Transactions are not used principally as a device for the distribution of the earnings and profits of Distributing, Controlled or both.
- (9) The total adjusted basis and the fair market value of the assets transferred to the Controlled corporation in the contribution will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by the Controlled corporation, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by the Distributing corporation and transferred to its creditors in connection with the reorganization.
- (10) The fair market value of the assets of the Controlled corporation will exceed the amount of its liabilities immediately after the exchange.

- (11) The aggregate fair market value of the assets transferred to the Controlled corporation in the Contribution will equal or exceed the aggregate adjusted basis of these assets.
- (12) The Distributing corporation neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (13) No incorporate debt will exist between Distributing and its subsidiaries and Controlled and its subsidiaries at the time of, or subsequent to, the distribution of Controlled, except for the outstanding Sub 2 Loan between Distributing and Sub 2 incurred in the formation of Trust 3.
- (14) Immediately before the distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations. (See § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995- 32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account (if any) with respect to the Controlled stock will be included in income immediately before the distribution. (See § 1.1502-19).
- (15) For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of the Distributing corporation's stock entitled to vote, or 50 percent or more of the total value of shares of all classes of the Distributing corporation's stock, that was acquired by purchase (as defined in §355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
- (16) For purposes of § 355(d), immediately after the distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of the Controlled corporation's stock entitled to vote, or 50 percent or more of the total value of shares of all classes of the Controlled corporation's stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution or (ii) attributable to distributions on the Distributing corporation's stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the distribution.
- (17) Payments made in connection with all continuing transactions, if any, between the Distributing and Controlled corporation, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (18) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (19) The distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (20) Immediately after the distribution, neither the Distributing corporation nor the Controlled corporation will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (21) The Class 1 stock and the Class 2 stock each constitute stock of Distributing for federal income tax purposes.

RULINGS

Based solely on the information and representations submitted, we rule as follows:

- (1) The transfer by Distributing to Controlled of the stock of Sub 2 solely in exchange for Controlled stock, followed by the distribution of the Controlled stock to Trusts 1, 2 & 3, will qualify as a reorganization within the meaning of I.R.C. 368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization within the meaning of IRC §368(b).
- (2) Distributing will recognize no gain or loss on its transfer of property to Controlled in exchange for Controlled stock and the assumption of liabilities, if any (IRC §§ 361(a) and 357(a)).
- (3) Controlled will recognize no gain or loss on the receipt of property from Distributing in exchange for Controlled stock (IRC §1032).
- (4) Controlled’s basis in the property received from Distributing in the Proposed Transactions will be the same as the basis of property in the hands of Distributing immediately before the transaction (IRC §362(b)).
- (5) Controlled’s holding period for the property received from Distributing in the Proposed Transactions will include the period during which Distributing held the property (IRC § 1223(2)).
- (6) Distributing will recognize no gain or loss on the distribution of the Controlled stock to Trusts 1, 2 and 3 (IRC § 361(c)(1)).

- (7) Trusts 1, 2 and 3 will recognize no gain or loss (and will not Include any amount in income) upon their receipt of Controlled stock from Distributing (IRC § 355(a)(1)).
- (8) The aggregate basis of the stock of Controlled in the hands of Trusts 1, 2 and 3 immediately after the distribution will equal the aggregate basis of the Distributing stock surrendered in exchange therefor (IRC § 358(a)(1) and Treas. Reg. § 1.358-2(a)(2)(i)).
- (9) The holding period of the Controlled stock held by Trusts 1, 2 and 3 will include the holding period of the Distributing stock surrendered in exchange therefor, provided that the Distributing stock is held as a capital asset on the date of the distribution (IRC §1223(1)).
- (10) Proper allocation of earnings and profits between Distributing and Controlled will be made in accordance with Treas. Reg. §1.312-10(a) and §1.1502-33.

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of §1.355-2(b);
- (ii) Whether the Distribution is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both; and
- (iii) Whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see section 355(e) and Treas. Reg. § 1.355-7).
- (iv) In addition, except as it relates to the qualification of the Contribution as a “reorganization” within the meaning of section 368(a)(1)(D) and the qualification of the Distribution under section 355(a)(1), no opinion is expressed concerning the Sub 2 Loan.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayers filing their return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard Heinecke
Assistant to the Branch Chief, Branch 6
Associate Chief Counsel (Corporate)